

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

wrist sprain and paid appropriate benefits.<sup>2</sup> Appellant returned to full-time limited duty on May 23, 2011.

In a June 15, 2011 report, Dr. Scott F. Garberman, a general surgeon, noted the history of injury and appellant's complaints of ulnar wrist pain with clicking. He stated that a magnetic resonance imaging (MRI) scan at the end of March revealed a small triangular fibrocartilage complex (TFCC) tear and cyst. On examination, Dr. Garberman found modest ulnar wrist pain, but no specific clicking. Range of motion was mildly limited with no tenderness or subluxation of the extensor carpi ulnaris. Grip strength was not tested. An impression of improving left TFCC tear was provided. Dr. Garberman recommended continued conservative care and limited duty until appellant returned to his office in approximately one month.

In reports dated June 24, July 18 and August 8, 2011, Dr. Garberman reported that the left TFCC tear was improving. In the August 8, 2011 report, he found trace edema, but no element of crepitus, clicking or locking with full range of motion of the wrist and true forearm pronation and supination to the extreme. Grip strength was improved and there was no tendon subluxation. Dr. Garberman concluded that appellant had some residual deficit and recommended an additional three weeks of therapy, after which he expected to release her from care. He noted that she continued care through Laura E. Ross-Adams, D.O., an orthopedic surgeon, for proximal arm difficulties.

In reports of July 11 and August 16, 2011, Dr. Ross-Adams, noted the history of injury and diagnosed wrist sprain/strain, ulnar neuropathy, which she opined was causally related to the employment injury based on appellant's account of events. She opined that appellant could work with restrictions.

On August 23, 2011 the employing establishment requested a second opinion examination, noting that appellant had undergone a long period of physical therapy without apparent improvement. It was noted that she had not been returned to her full duties and her secretarial job had very limited physical demands.

In an August 29, 2011 report, Dr. Garberman reported normal physical findings with regard to appellant's wrist. He released her from his care, but stated that limited-duty restrictions would continue.

In a September 23, 2011 report, Dr. Stanley Askin, a Board-certified orthopedic surgeon and second opinion physician, noted the history of appellant's February 23, 2011 injury as well as her March 17, 2011 injury, and the accepted diagnosis of left wrist sprain. He indicated that he reviewed her position description. Dr. Askin reported an essentially normal physical evaluation of appellant's left wrist and opined that there was no basis for disability from her doing her secretarial job or the need for ongoing medical treatment. Regarding appellant's objective findings, he noted that she had a slight pop at the extensor carpi ulnaris, but such did not appear to correspond with the area of her complaint. Dr. Askin noted that his disagreement that appellant's left wrist MRI scan demonstrated a TFCC tear, indicating that it was not

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<sup>2</sup> Under case File No. xxxxxx116, appellant filed a claim for injury to the left wrist on February 23, 2011. The claim was administratively closed and she returned to full duty.

necessarily secondary to the reported occurrence, was not explanatory of her complaints and did not appear to require any specific intervention. He stated that the sorts of imperfections that were defined on her MRI scan report would be likely present if her nonsymptomatic right upper extremity were similarly studied. Dr. Askin explained that a TFCC tear was a normal finding for a person of appellant's age and that such tears were present in approximately 50 percent of the persons her age with no actual injury event or need for treatment. He explained that while a triangular fibrocartilage complex could be clinically significant if its function as the prime stabilizer of the distal radial ulnar joint was lost, but she did not present with lost stability of the distal radial ulnar joint. Dr. Askin opined that appellant's subjective complaints were out of proportion with her objective findings. If in fact appellant had joint imperfection she should have evidence of inflammatory reaction, or synovitis, but she did not. Dr. Askin also noted that the cyst in her left wrist would not have been caused by a work injury and was not located in the area where she reported discomfort. He concluded that appellant had no objective findings of disability and that she did not require further medical care.

On October 13, 2011 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Askin's second opinion report, established that she no longer had any residuals as a result of the work injury.

Following the notice of proposed termination, OWCP received a statement from appellant disagreeing with OWCP's proposal to terminate her compensation benefits. Appellant indicated that Dr. Garberman provided minimal evaluation of her wrist. She indicated that she was uncomfortable with Dr. Askin as he did not appear to have a real medical office. Appellant indicated that her new physician, Dr. David Fuller, Board-certified in hand surgery, whom she saw for a second opinion, advised her that she needed more time to heal.

In September 30, 2011 CA-20 and OWCP-5c forms and in a November 7, 2011 note, Dr. Ross-Adams opined that the March 17, 2011 work injury was the direct cause of appellant's wrist sprain. She further opined that appellant was able to work light duty with restrictions.

In a November 7, 2011 note, Dr. Fuller noted that appellant's physical examination was normal and he could not appreciate any popping on the dorsum of the left wrist. An impression of left wrist pain with TFCC tear by MRI scan and tendinosis was provided. Dr. Fuller recommended that appellant work through this in a nonsurgical fashion and that he would see her on an as needed basis.

A November 3, 2011 x-ray of the left wrist was reported as being normal.

By decision dated November 30, 2011, OWCP terminated appellant's benefits, effective November 30, 2011, finding that Dr. Askin's opinion represented the weight of the medical evidence.

On December 19, 2011 appellant requested a review of the written record before an OWCP representative. In a December 19, 2011 statement, she indicated that Dr. Askin and Dr. Ross-Adams had indicated that she needed a functional capacity evaluation.

Dr. Ross-Adams continued to submit OWCP-5c forms and CA-20 forms indicating that appellant could only work light duty. In a December 6, 2011 report, she noted the history of

injury and appellant's medical course. Dr. Ross-Adams indicated that, upon examination of appellant's left wrist on November 7, 2011, she found a continued limited range of motion as well as tenderness over the TFCC region. She stated that she recommended that appellant refrain from any activities that could aggravate the wrist and also recommended a continued light-duty status, as appellant had continued pain and swelling in her wrist.

In a January 3, 2012 report, Dr. Ross-Adams noted that appellant was still having a lot of weakness and pain. Appellant indicated that she saw a hand surgeon, who recommended the possibility of surgery. Physical examination revealed weakness and limited mobility of the left wrist. Appellant was tender to palpation on the volar surface in the mid carpus, tender over the TFCC of the left wrist and had limited mobility. Watson maneuver was negative. An impression of TFCC tear of the left wrist extensor tendinitis and volar ganglion cyst was provided. Dr. Ross-Adams stated that appellant's prognosis was poor for her to return to any job that required skilled use of her left hand and wrist, including use of a firearm. She recommended that appellant undergo a therapeutic evaluation to determine what type of position she was capable of doing with regards to her left wrist and hand.

By decision dated July 11, 2012, OWCP's hearing representative affirmed the termination of appellant's compensation benefits.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>4</sup>

OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> In addition to a proper factual and medical background, a rationalized medical opinion is one of reasonable medical certainty and supported by medical rationale explaining the opinion.<sup>6</sup>

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<sup>3</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>5</sup> *J.M.*, 58 ECAB 478 (2007).

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

## ANALYSIS

OWCP accepted that on March 17, 2011 appellant sustained a left wrist strain and paid appropriate benefits. It terminated her benefits effective November 30, 2011 finding that she no longer had any residuals or disability due to her work injury.

Appellant's treating physician, Dr. Garberman, initially reported that appellant's March 2011 MRI scan revealed TFCC tear and a cyst. However, he did not provide a rationalized opinion as to how these conditions were causally related to her accepted March 17, 2011 injury. By August 29, 2011, Dr. Garberman reported essentially normal physical findings with regards to appellant's wrist. He released her from his care, but stated that limited-duty restrictions would continue, Dr. Garberman offered no explanation as to why appellant should continue with limited-duty restrictions, given her examination findings.

Appellant was thereafter examined by Dr. Askin, a second opinion physician. In terminating her compensation benefits, weight was accorded to his second opinion report, which found that she had no further employment-related residuals or disability. The Board finds that OWCP properly terminated appellant's compensation benefits.

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup> In his September 23, 2011 report, Dr. Askin noted appellant's history of two employment injuries to her left wrist, occurring on February 23 and March 17, 2011, and reviewed her current complaints. He thereafter reported findings from a thorough physical examination, concluding that she had an essentially normal left wrist, with no swelling or edema and full range of motion. Dr. Askin related that appellant did have a light pop at the extensor carpi ulnaris, but he also explained that this finding did not correspond to her complaints. He opined that she had no current findings or symptoms that could be explained or caused by the injury. Dr. Askin explained the MRI scan finding of a TFCC tear was a normal finding for persons of appellant's age and that such tears were present in 50 percent of persons her age with no actual injury event or need for treatment. He also explained that her cyst in the left wrist would not have been caused by the work injury and was not located in the area where she reported discomfort. Dr. Askin concluded that appellant had no disability and did not require further medical care.

The Board finds that Dr. Askin provided a comprehensive, well-rationalized opinion in which he clearly advised that any residuals of appellant's accepted condition had resolved and that she could return to work without restrictions and no further medical treatment was necessary. Dr. Askin further explained how the findings on MRI scan of TFCC tear and cyst were not caused by appellant's work injuries and were not disabling. His opinion therefore constitutes the weight of the medical evidence. The Board notes, that contrary to appellant's assertion, Dr. Askin did not indicated that a functional capacity evaluation was necessary.

Following Dr. Askin's evaluation, appellant submitted additional medical evidence in support of her claim. In his November 7, 2011 report, Dr. Fuller provided an impression of left

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<sup>7</sup> C.B., Docket No. 08-1583 (issued December 9, 2008).

wrist pain with TFCC tear by MRI scan and tendinosis and recommended nonsurgical care. However, he did not provide any rationale to explain whether and how the findings on MRI scan would be disabling or caused by appellant's work injuries. As such Dr. Fuller's opinion is of limited probative value.

Dr. Ross-Adams, in her July 11, 2011 report, noted a diagnosis of left wrist sprain and ulnar neuropathy, which she stated were related to appellant's employment injury, according to appellant's recitation of events. She did not explain her diagnosis of ulnar neuropathy, based upon objective medical findings. In her November 7, 2011 report, Dr. Ross-Adams opined that the March 17, 2011 injury was the direct cause of appellant's wrist sprain. However, she offered no opinion or findings related to any ongoing disability or medical treatment with regards to the accepted sprain. In her subsequent reports of December 6, 2011 and January 3, 2012, Dr. Ross-Adams focused on the nonaccepted condition of TFCC tear and volar ganglion cyst. She found continued limited range of motion and tenderness over the TFCC region and recommended a continued light-duty status due to appellant's continued pain and swelling in her wrist. However, Dr. Ross-Adams failed to offer an opinion or provide any medical rationale how the nonaccepted TFCC condition and volar ganglion cyst would be due to the accepted work injury.<sup>8</sup> Furthermore, her examination findings are contradicted by the findings of both Dr. Askin and Dr. Fuller, who both reported a full range of motion of the wrist and described a normal physical examination of the wrist.

The Board therefore concludes that Dr. Askin's opinion that appellant had recovered from the employment injury represents the weight of the medical evidence. The additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether she had residuals or disability related to the accepted injury. OWCP therefore properly terminated her compensation benefits effective November 30, 2011.

While counsel argues that the decision is contrary to fact and law, the medical evidence fails to support any remaining residuals or disability due to the accepted condition. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation benefits effective November 30, 2011.

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<sup>8</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board